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October 26, 2021

BY ECF

The Honorable Norman K. Moon  
United States District Court  
Western District of Virginia  
255 West Main Street  
Charlottesville, VA 22902

Re: *Sines et al. v. Kessler et al.*, No. 3:17-cv-00072 (NKM) (JCH)

Dear Judge Moon:

Plaintiffs write to provide the Court with case law concerning the appropriate remedy for a *Batson* violation. Under *Batson v. Kentucky*, trial courts retain broad discretion to fashion an appropriate remedy for a discriminatory preemptory strike. 476 U.S. 79, 99 n.24 (1986); *United States v. Aleman*, 246 F. App'x 731, 735 (2d Cir. 2007); *United States v. Walker*, 490 F.3d 1282, 1294 (11th Cir. 2007); *see also Tolen v. Cartledge*, No. 1:15-cv-02503-RBH, 2017 U.S. Dist. LEXIS 157511, at \*34 n.3 (D.S.C. Sep. 26, 2017) ("*Batson* is silent as to the remedy for a *Batson* violation").

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Several courts have held that *Batson*'s purpose is best effectuated by forfeiting the violating party's unconstitutional preemptory strike. *Aleman*, 246 F. App'x at 735; *Walker*, 490 F.3d at 1295; *Peetz v. State*, 180 S.W.3d 755, 761 (Tex. App. 2005) ("The effect of a successful *Batson* challenge always has been that the party exercising the strikes does not enjoy the benefit of those strikes"); *People v. Johnson*, 196 Misc. 2d 417, 420 (N.Y. Sup. Ct. 2003) ("If the court finds purposeful discrimination, it should permanently disallow the challenge and seat the juror because returning the party to its original position would not deter subsequent discriminatory strikes"). Other courts have reinstated the preemptory strike where there was "no evidence of egregious bad faith or maliciousness on the part" of the striking party. *United States v. Ramirez-Martinez*, 273 F.3d 903, 910 (9th Cir. 2001).

*Jimenez v. City of Chicago*, 877 F. Supp. 2d 649, 662 (N.D. Ill. 2012), is instructive here. The "Defendants' justification of their decision to challenge an African-American juror was not at all credible, because the justification applied much more strongly to a white juror whom defendants did not strike. When confronted with the discrepancy, defendants could not give a satisfactory explanation, thus further confirming that any nonracial justification they offered was pretextual." *Id.* The Court then held that "allowing defendants to try again . . . would provide an insufficient sanction for and deterrence of racially discriminatory conduct." *Id.*

Very truly yours,



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